

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 128
95TH GENERAL ASSEMBLY

Reported from the Committee on Transportation, January 29, 2009, with recommendation that the Senate Committee Substitute do pass.

0320S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 227.107, RSMo, and to enact in lieu thereof one new section relating to state highways and transportation commission design-build highway project contracts, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 227.107, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 227.107, to read as follows:

227.107. 1. Notwithstanding any provision of section 227.100 to the contrary, as an alternative to the requirements and procedures specified by sections 227.040 to 227.100, the state highways and transportation commission is authorized to enter into highway design-build project contracts. [The authority granted to the state highways and transportation commission by this section shall be limited to a total of three design-build project contracts. Two design-build projects authorized by this section shall be selected by the highways and transportation commission from 1992 fifteen year plan projects. Authority to enter into design-build projects granted by this section shall expire on July 1, 2012, unless extended by statute or upon completion of three projects, whichever is first.]

2. For the purpose of this section a "design-builder" is defined as an individual, corporation, partnership, joint venture or other entity, including combinations of such entities making a proposal to perform or performing a design-build highway project contract.

3. For the purpose of this section, "design-build highway project contract" is defined as the procurement of all materials and services necessary for the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 design, construction, reconstruction or improvement of a state highway project in
19 a single contract with a design-builder capable of providing the necessary
20 materials and services.

21 4. For the purpose of this section, "highway project" is defined as the
22 design, construction, reconstruction or improvement of highways or bridges under
23 contract with the state highways and transportation commission, which is funded
24 by state, federal or local funds or any combination of such funds.

25 5. In using a design-build highway project contract, the commission shall
26 establish a written procedure by rule for prequalifying design-builders before
27 such design-builders will be allowed to make a proposal on the project.

28 6. In any design-build highway project contract, whether involving state
29 or federal funds, the commission shall require that each person submitting a
30 request for qualifications provide a detailed disadvantaged business enterprise
31 participation plan. The plan shall provide information describing the experience
32 of the person in meeting disadvantaged business enterprise participation goals,
33 how the person will meet the department of transportation's disadvantaged
34 business enterprise participation goal and such other qualifications that the
35 commission considers to be in the best interest of the state.

36 7. The commission is authorized to issue a request for proposals to a
37 maximum of five design-builders prequalified in accordance with subsection 5 of
38 this section.

39 8. The commission may require approval of any person performing
40 subcontract work on the design-build highway project.

41 9. [The bid bond and performance bond requirements of section 227.100
42 and the payment bond requirements of section 107.170, RSMo, shall apply to the
43 design-build highway project.

44 10. The requirements of subsection 9 of this section may be modified by
45 the commission for any design-build highway project contract which is designated
46 by the commission as a "design-build-finance-maintain" project, and for which the
47 contract with the design-builder exceeds twenty-five years. For such projects,]
48 **Notwithstanding the provisions of section 107.170, RSMo, and section**
49 **227.100 to the contrary**, the commission shall require the design-builder to
50 provide[, or cause to be provided by the construction entity or entities providing
51 construction services under contract] to the [design-builder] **commission**
52 directly, such **bid, performance and payment** bonds, or such [other security]
53 **letters of credit**, in such terms, durations, [and] amounts, **and on such forms**

54 as the commission may determine to be adequate for its protection and provided
55 by a surety, sureties, or financial institution or institutions satisfactory to the
56 commission, including but not limited to:

57 (1) A bid or proposal bond, [or other security authorized under subsection
58 2 of section 227.100, in an amount of not less than five million dollars] **cash or**
59 **a certified or cashier's check;**

60 (2) A performance bond or bonds for the construction period specified in
61 the design-build highway project contract [in an aggregate amount of not less
62 than two hundred million dollars or twenty-five percent of a reasonable estimate
63 of the cost of construction work, whichever amount is lower, except the
64 commission may allow other security in lieu of or in addition to any bond or
65 bonds, including but not limited to letters of credit or other negotiable
66 instruments, such other or additional security to be on such terms, for such
67 durations, and in such amounts as the commission may determine to be adequate
68 for the protection of the commission, and to be provided by sureties or financial
69 institutions satisfactory to the commission] **equal to a reasonable estimate**
70 **of the total cost of construction work under the terms of the design-**
71 **build highway project contract, unless the commission determines in**
72 **writing supported by specific findings that a performance bond or**
73 **bonds in such amount is impractical, in which case the commission**
74 **shall establish the amount of the performance bond or bonds; and**

75 (3) A payment bond or bonds that shall be enforceable under section
76 522.300, RSMo, for the protection of persons supplying labor and material in
77 carrying out the construction work provided for in the design-build highway
78 project contract. The aggregate amount of the payment bond or bonds shall equal
79 a reasonable estimate of the total amount payable for the cost of construction
80 work under the terms of the design-build highway project contract unless the
81 commission determines in writing supported by specific findings that a payment
82 bond or bonds in such amount is impractical, in which case the commission shall
83 establish the amount of the payment bond or bonds; except that the amount of the
84 payment bond or bonds shall not be less than the aggregate amount of the
85 performance bond or bonds [and the additional security to such performance bond
86 or bonds, or in the amount of the other security used in lieu of the performance
87 bond or bonds].

88 [11.] 10. The commission is authorized to prescribe the form of the
89 contracts for the work.

90 [12.] 11. The commission is empowered to make all final decisions
91 concerning the performance of the work under the design-build highway project
92 contract, including claims for additional time and compensation.

93 [13.] 12. The provisions of sections 8.285 to 8.291, RSMo, shall not apply
94 to the procurement of architectural, engineering or land surveying services for the
95 design-build highway project, except that any person providing architectural,
96 engineering or land surveying services for the design-builder on the design-build
97 highway project must be licensed in Missouri to provide such services.

98 [14.] 13. The commission shall pay a reasonable stipend to prequalified
99 responsive design-builders who submit a proposal, but are not awarded the
100 design-build highway project.

101 [15.] 14. The commission shall comply with the provisions of any act of
102 congress or any regulations of any federal administrative agency which provides
103 and authorizes the use of federal funds for highway projects using the
104 design-build process.

105 [16.] 15. The commission shall promulgate administrative rules to
106 implement this section or to secure federal funds. Such rules shall be published
107 for comment in the Missouri Register and shall include prequalification criteria,
108 the make-up of the prequalification review team, specifications for the design
109 criteria package, the method of advertising, receiving and evaluating proposals
110 from design-builders, the criteria for awarding the design-build highway project
111 based on the design criteria package and a separate proposal stating the cost of
112 construction, and other methods, procedures and criteria necessary to administer
113 this section.

114 [17.] 16. The commission shall make a status report to the members of
115 the general assembly and the governor following the award of the design-build
116 project, as an individual component of the annual report submitted by the
117 commission to the joint transportation oversight committee in accordance with the
118 provisions of section 21.795, RSMo. The annual report prior to advertisement of
119 the design-build highway project contracts shall state the goals of the project in
120 reducing costs and/or the time of completion for the project in comparison to the
121 design-bid-build method of construction and objective measurements to be utilized
122 in determining achievement of such goals. Subsequent annual reports shall
123 include: the time estimated for design and construction of different phases or
124 segments of the project and the actual time required to complete such work
125 during the period; the amount of each progress payment to the design-builder

126 during the period and the percentage and a description of the portion of the
127 project completed regarding such payment; the number and a description of
128 design change orders issued during the period and the cost of each such change
129 order; upon substantial and final completion, the total cost of the design-build
130 highway project with a breakdown of costs for design and construction; and such
131 other measurements as specified by rule. The annual report immediately after
132 final completion of the project shall state an assessment of the advantages and
133 disadvantages of the design-build method of contracting for highway and bridge
134 projects in comparison to the design-bid-build method of contracting and an
135 assessment of whether the goals of the project in reducing costs and/or the time
136 of completion of the project were met.

137 [18.] 17. The commission shall give public notice of a request for
138 qualifications in at least two public newspapers that are distributed wholly or in
139 part in this state and at least one construction industry trade publication that is
140 distributed nationally.

141 [19.] 18. The commission shall publish its cost estimates of the
142 design-build highway project award and the project completion date along with
143 its public notice of a request for qualifications of the design-build project.

144 [20.] 19. If the commission fails to receive at least two responsive
145 submissions from design-builders considered qualified, submissions shall not be
146 opened and it shall readvertise the project.

Section B. Because Congress is considering enactment of an economic
2 stimulus bill that appropriates additional federal-aid highway funds to all states,
3 including Missouri, which must be committed for additional state highway system
4 projects within the expedited timeframe specified in the economic stimulus bill,
5 immediate action is necessary to ensure that the state of Missouri, through the
6 Missouri highways and transportation commission, has design-build authority to
7 meet the highway project construction start date requirements, section A of this
8 act is deemed necessary for the immediate preservation of the public health,
9 welfare, peace and safety, and is hereby declared to be an emergency act within
10 the meaning of the constitution, and section A of this act shall be in full force and
11 effect upon its passage and approval.

✓